

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CINGULAR WIRELESS LLC,
a Limited Liability Company,

Plaintiff

CIVIL 03-1563 (PG)

V.

VALUEDGUEST, INC.; PREMIER
DESTINATIONS INTERNATIONAL,
INC.; RED PROTON, INC.

Defendants

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On June 9, 2004, the court entered judgment in favor plaintiff and against defendants in this action which arises under the Federal Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 et seq., the Lanham Act of 1946, 15 U.S.C. §§ 1051 et seq. and other causes of action including supplemental claims. (Docket No. 5.) Defendants were found to have infringed CINGULAR's trademark rights and to have caused consumer confusion. The Federal Computer Fraud and Abuse Act specifically provides for maintaining a civil action against violators of this criminal statute in order to obtain compensatory damages and injunctive relief or other equitable relief. 18 U.S.C. § 1030(g). The judgment also directed the defendants to pay reasonable attorney's fees.

On July 29, 2004, attorney Stephen M. Schaetzel filed a declaration in support of plaintiff's request for attorney's fees and costs, including numerous invoices

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3 reflecting attorney's fees charged by the law firms of Kilpatrick Stockton LLP and
4 Pietrantoni Mendez & Alvarez LLP.

5 This matter was referred to me for report and recommendation on July 12,
6 2005. (Docket No. 10.) Because the fees are awarded as a result of a default
7 judgment, there is no opposition to the same.
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9 **III. APPLICABLE LAW AND ANALYSIS**

10 Under the so-called American Rule, parties are ordinarily required to bear
11 their own attorney's fees and the prevailing party is not entitled to collect from the
12 loser. Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.,
13 532 U.S. 598, 602 (2001) (citing Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421
14 U.S. 240, 247 (1975)). There are, however, exceptions to the American Rule against
15 fee shifting. Title 15 U.S.C. § 1117 is one such exception. See Tamko Roofing
16 Production Inc. v. Ideal Roofing Company LTD., 294 F.3d 227, 229-30 (1st Cir.
17 2002). Since plaintiff is entitled to recover attorney's fees, I need determine
18 whether the award requested is reasonable.
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21 In accordance with the declaration of Stephen M. Schaetzel Esq. in support of
22 an award of attorney's fees in favor of plaintiff, plaintiff requests a total award of
23 attorney's fees of \$45,569.70 through June 8, 2004 for work performed by the firm
24 of Kilpatrick Stockton and \$5,673.50 for work performed by the law firm of
25 Pietrantoni, Mendez & Alvarez. Supporting documentation accompanies the
26 statement. Counsel for both firms have emphasized that the nature and complexity
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3 of the case, the generally prevailing rates in the respective geographical areas for
4 lawyers of comparable experience, their reputation and experience, and
5 competitiveness with other firms reflect the reasonableness of the rates and hours
6 worked. Furthermore, in the case of Kilpatrick Knowlton, and as a result of
7 negotiation, the fees are discounted up to 10% because of the volume of work which
8 that law firm performs for Cingular. Both firms have included contemporaneous
9 time records reflecting the work preformed in relation to this case as well as the
10 details of the discount as to Kilpatrick Knowlton. See Anywhere, Inc. v. Romero,
11 344 F. Supp. 2d 345, 347-48 (D.P.R. 2004); Cf. Grendel's Den, Inc. v. Larkin, 749
12 F.2d 945, 952 (1st Cir. 1984).

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14 I have reviewed each of the statements submitted by the attorneys. Thus I
15 find that the time employed and reasonableness of the fees are not an issue.

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17 IV. CONCLUSION

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19 In view of the above, I recommend that defendants in solido be ordered to pay
20 an award of attorney's fees of \$45,569.70 for work performed by the firm of
21 Kilpatrick Stockton plus \$5,673.50 for work performed by the law firm of
22 Pietrantoni, Mendez & Alvarez for a total of \$51,243.20, with pre-judgment interest
23 beginning on June 8, 2004.

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25 Under the provisions of Rule 72(d), Local Rules, District of Puerto Rico, any
26 party who objects to this report and recommendation must file a written objection
27 thereto with the Clerk of this Court within ten (10) days of the party's receipt of this
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3 report and recommendation. The written objections must specifically identify the
4 portion of the recommendation, or report to which objection is made and the basis
5 for such objections. Failure to comply with this rule precludes further appellate
6 review. See Thomas v. Arn, 474 U.S. 140, 155 (1985); Davet v. Maccorone, 973 F.2d
7 22, 30-31 (1st Cir. 1992); Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840
8 F.2d 985 (1st Cir. 1988); Borden v. Sec'y of Health & Human Servs., 836 F.2d 4, 6
9 (1st Cir. 1987); Scott v. Schweiker, 702 F.2d 13, 14 (1st Cir. 1983); United States v.
10 Vega, 678 F.2d 376, 378-79 (1st Cir. 1982); Park Motor Mart, Inc. v. Ford Motor Co.,
11 616 F.2d 603 (1st Cir. 1980).

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13 At San Juan, Puerto Rico, this 13th day of July, 2005.

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15 S/ JUSTO ARENAS
16 Chief United States Magistrate Judge
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